call-back provision, in addition to $200 for working his regular schedule and $7.50 for overtime worked on Monday evening. In computing overtime compensation due this employee under the Act, the 43 actual hours (not 44) are counted as working time during the week. In addition to $215 pay at the $5 rate for all these hours, he has received under the agreement a premium of $2.50 for the 1 overtime hour on Monday and of $5 for the 2 hours of overtime work on the call, plus an extra sum of $7.50 paid by reason of the provision for minimum call-back pay. For purposes of the Act, the extra premiums paid for actual hours of overtime work on Monday and on the Friday call (a total of $7.50) may be excluded as true overtime premiums in computing his regular rate for the week and may be credited toward compensation due under the Act, but the extra $7.50 received under the call-back provision is not regarded as paid for hours worked; therefore, it may be excluded from the regular rate, but it cannot be credited toward overtime compensation due under the Act. The regular rate of the employee, therefore, remains $5, and he has received an overtime premium of $2.50 an hour for 3 overtime hours of work. This satisfies the requirements of section 7 of the Act. The same would be true, of course, if in the foregoing example, the employee was called back outside his scheduled hours for the 2-hour emergency job on another night of the week or on Saturday or Sunday, instead of on Friday night.

[33 FR 986, Jan. 26, 1968, as amended at 46 FR 7313, Jan. 23, 1981]

§ 778.222 Other payments similar to "call-back" pay.

The principles discussed in §§ 778.220 and 778.221 are also applied with respect to certain types of extra payments which are similar to call-back pay, such as: (a) Extra payments made to employees, on infrequent and sporadic occasions, for failure to give the employee sufficient notice to report for work on regular days of rest or during hours outside of his regular work schedule; and (b) extra payments made, on infrequent and sporadic occasions, solely because the employee has been called back to work before the expiration of a specified number of hours between shifts or tours of duty, sometimes referred to as a ''rest period.'' The extra payment, over and above the employee's earnings for the hours actually worked at his applicable rate (straight time or overtime, as the case may be), is considered as a payment that is not made for hours worked.

§ 778.223 Pay for non-productive hours distinguished.

Under the Act an employee must be compensated for all hours worked. As a general rule the term ''hours worked'' will include: (a) All time during which an employee is required to be on duty or to be on the employer's premises or at a prescribed workplace and (b) all time during which an employee is suffered or permitted to work whether or not he is required to do so. Thus, working time is not limited to the hours spent in active productive labor, but includes time given by the employee to the employer even though part of the time may be spent in idleness. Some of the hours spent by employees, under certain circumstances, in such activities as waiting for work, remaining ''on call'', traveling on the employer's business or to and from workplaces, and in meal periods and rest periods are regarded as working time and some are not. The governing principles are discussed in part 785 of this chapter (interpretative bulletin on ''hours worked'') and part 790 of this chapter (statement of effect of Portal-to-Portal Act of 1947). To the extent that these hours are regarded as working time, payment made as compensation for these hours obviously cannot be characterized as ''payments not for hours worked.'' Such compensation is treated in the same manner as compensation for any other working time and is, of course, included in the regular rate of pay. Where payment is ostensibly made as compensation for such of these hours as are not regarded as working time under the Act, the payment is nevertheless included in the regular rate of pay unless it qualifies for exclusion from the regular rate as one of a type of ''payments made for occasional periods when no work is performed due

to * * * failure of the employer to provide sufficient work, or other similar cause'' as discussed in § 778.218 or is excludable on some other basis under section 7(e)(2). For example, an employment contract may provide that employees who are assigned to take calls for specific periods will receive a payment of $5 for each 8–hour period during which they are ''on call'' in addition to pay at their regular (or overtime) rate for hours actually spent in making calls. If the employees who are thus on call are not confined to their homes or to any particular place, but may come and go as they please, provided that they leave word where they may be reached, the hours spent ''on call'' are not considered as hours worked. Although the payment received by such employees for such ''on call'' time is, therefore, not allocable to any specific hours of work, it is clearly paid as compensation for performing a duty involved in the employee's job and is not of a type excludable under section 7(e)(2). The payment must therefore be included in the employee's regular rate in the same manner as any payment for services, such as an attendance bonus, which is not related to any specific hours of work.

[46 FR 7313, Jan. 23, 1981]

§ 778.224 "Other similar payments".

(a) *General.* The preceding sections have enumerated and discussed the basic types of payments for which exclusion from the regular rate is specifically provided under section 7(e)(2) because they are not made as compensation for hours of work. Section 7(e) (2) also authorizes exclusion from the regular rate of ''other similar payments to an employee which are not made as compensation for his hours of employment.'' Since a variety of miscellaneous payments are paid by an employer to an employee under peculiar circumstances, it was not considered feasible to attempt to list them. They must, however, be ''similar'' in character to the payments specifically described in section 7(e)(2). It is clear that the clause was not intended to permit the exclusion from the regular rate of payments such as bonuses or the furnishing of facilities like board and lodging which, though not directly attributable to any particular hours of work are, nevertheless, clearly understood to be compensation for services.

(b) *Examples of other excludable payments.* A few examples may serve to illustrate some of the types of payments intended to be excluded as ''other similar payments'':

(1) Sums paid to an employee for the rental of his truck or car.

(2) Loans or advances made by the employer to the employee.

(3) The cost to the employer of conveniences furnished to the employee such as parking space, restrooms, lockers, on-the-job medical care and recreational facilities.

TALENT FEES IN THE RADIO AND TELEVISION INDUSTRY

§ 778.225 Talent fees excludable under regulations.

Section 7(e)(3) provides for the exclusion from the regular rate of ''talent fees (as such talent fees are defined and delimited by regulations of the Secretary) paid to performers, including announcers, on radio and television programs.'' Regulations defining ''talent fees'' have been issued as part 550 of this chapter. Payments which accord with this definition are excluded from the regular rate.

Subpart D—Special Problems

INTRODUCTORY

§ 778.300 Scope of subpart.

This subpart applies the principles of computing overtime to some of the problems that arise frequently.

CHANGE IN THE BEGINNING OF THE WORKWEEK

§ 778.301 Overlapping when change of workweek is made.

As stated in § 778.105, the beginning of the workweek may be changed for an employee or for a group of employees if the change is intended to be permanent and is not designed to evade the overtime requirements of the Act. A change in the workweek necessarily results in a situation in which one or more hours or days fall in both the ''old'' workweek as previously constituted and the